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Montana
Office of Public Instruction
Denise Juneau, State Superintendent

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HB

History of the In-State Treatment Money

Prior to 1993, schools paid for in-state treatment of students. The Office of Public Instruction (OPI) partially supported the schools for some of the cost on a proportionate basis (50 to 75%) from the special education appropriation and sometimes the OPI was able to help schools using contingency funds under a now abandoned special education funding model.

Schools were often very upset by these expenditures because they had no control of the cost. The bill would often come as a surprise mid-year, and the school responsible for paying the expense would sometimes never have even met the child. This occurred because the district of residence was responsible for paying even if the child was in a group home or foster care prior to placement in the Psychiatric Residential Treatment Facility (PRTF) or if the parent had moved to a different community making the new community the new district of residence and thereby, responsible for paying the cost. As one might imagine, schools were not happy with this arrangement.

The change in 1993 was made possible because Congress passed legislation that clarified that education services, when provided in a PRTF, were inseparable from treatment and therefore both were Medicaid reimbursable. Knowing this change in federal Medicaid law, the Office of Public Instruction worked with the Department of Public Health & Human Services (DPHHS) to include education costs as part of the payment to facilities for treatment services. This change, obligating DPHHS to pay for the education costs of Medicaid eligible recipients saved the state about \$1,000,000 annually the first year. Cumulative savings over the last two decades are estimated to be in the \$20 - \$30 million range.

Why does the OPI pay for education costs of any of the children in a PRTF?

A small proportion of children in the Psychiatric Residential Treatment Facility are not Medicaid eligible. Some children in a PRTF are not Medicaid eligible because of income and some are not eligible because they lost their status as meeting medical necessity criteria for placement in a PRTF. Both Medicaid eligibility and medical necessity are required for Medicaid to reimburse any of the PRTF costs. It is for these remaining children that the OPI pays for education costs.

Funds saved by leveraging Medicaid were placed into an OPI general fund account to pay the PRTF for education so that local schools would no longer be saddled with an expense they could not anticipate for a child they may not have ever met.

Which facilities in Montana receive funding from the in-state residential treatment appropriation?

Shodair (Helena)
Yellowstone Boys and Girls Ranch (Billings)
Acadia (Butte)
Intermountain Children's Home (Helena)

Relevant state statutes

20-7-420. Residency requirements -- financial responsibility for special education. (1)

Except for a pupil attending the Montana youth challenge program or a job corps program pursuant to 20-9-707, a child's district of residence for special education purposes must be determined in accordance with the provisions of 1-1-215, unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent's last-known district of residence is the child's district of residence.

(2) The superintendent of public instruction is financially responsible for tuition and transportation as established under 20-5-323 and 20-5-324 for a child with a disability, as defined in 20-7-401, who attends school outside the district and county of residence because the student has been placed in a foster care or group home licensed by the state. The superintendent of public instruction is not financially responsible for tuition and transportation for a child who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.

(3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential treatment facility or children's psychiatric hospital, as defined in 20-7-436, and the educational services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the superintendent of public instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district's costs of providing education and related services. Payments must be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay the remaining balance from available funds. However, the amount spent from available funds for this purpose may not exceed \$500,000 during a biennium.

(4) A state agency that makes a placement of a child with a disability is responsible for the financial costs of room and board and the treatment of the child. The state agency that makes an out-of-state placement of a child with a disability is responsible for the education fees required to provide a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4.

20-7-435. Funding of educational programs at in-state children's psychiatric hospitals and in-state residential treatment programs for eligible children. (1) It is the intent of the legislature that eligible children in in-state children's psychiatric hospitals and residential treatment facilities be provided with an appropriate educational opportunity in a cost-effective manner, including the provision of a free appropriate public education for an eligible child with a disability that is consistent with state standards for the provision of special education and related services. General education programs for eligible children without disabilities must be provided in accordance with the requirements for a nonpublic school under the provisions of 20-5-109.

(2) The superintendent of public instruction may contract with an in-state children's psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the hospital or treatment facility.

(3) Whenever the superintendent of public instruction contracts with an in-state children's psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the children's psychiatric hospital or residential treatment facility, the superintendent of public instruction shall:

(a) ensure the provision of a free appropriate public education and an education that is

consistent with the requirements for a nonpublic school in 20-5-109 for children attending the hospital or residential treatment facility;

(b) negotiate the approval of allowable costs under the provisions of 20-7-431 for allowable costs for providing special education, including the costs of retirement benefits, federal social security system contributions, and unemployment compensation insurance;

(c) from appropriations provided for this purpose, fund any approved allowable costs under this section, with the exception of services for which reimbursement is made under any provision of state or federal law or an insurance policy;

(d) provide funding for allowable costs according to a proration based on average daily membership.

(4) A supplemental education fee or tuition may not be charged for an eligible Montana child who receives inpatient treatment and an education under contract with an in-state children's psychiatric hospital or residential treatment facility.

(5) If a children's psychiatric hospital or residential treatment facility fails to provide an education in accordance with 20-5-109 or a free appropriate public education under the provisions of this part for an eligible child at the children's psychiatric hospital or residential treatment facility or fails to negotiate a contract under the provisions of subsection (2), the superintendent of public instruction shall negotiate with the school district in which the children's psychiatric hospital or residential treatment facility is located for the supervision and implementation of an appropriate educational program that is consistent with accreditation standards provided for in 20-7-111 and with the provisions of 20-7-402 for children attending the children's psychiatric hospital or residential treatment facility. The amount negotiated with the school district must include all education and related services costs that may be negotiated under the provisions of subsection (3) and all education and related services costs necessary to fulfill the requirements of providing the child with an education.

(6) Funds provided to a district under this section, including funds received under the provisions of 20-7-420:

(a) must be deposited in the miscellaneous programs fund of the district that provides the education program for an eligible child, regardless of the age or grade placement of the child who is served under a negotiated contract; and

(b) are not subject to the budget limitations in 20-9-308.

20-7-436. Definitions. For the purposes of 20-7-435 and this section, the following definitions apply:

(1) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:

(i) has the primary purpose of providing clinical care for children and youth whose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and

(ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of the centers for medicare and medicaid services, or other comparable accreditation.

(b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment.

(2) "Eligible child" means a Montana resident child or youth who is less than 19 years of age and who has an emotional problem that is so severe that the child or youth has been placed in a children's psychiatric hospital or residential treatment facility for inpatient treatment of emotional problems.

(3) (a) "Residential treatment facility" means a facility in the state that:

- (i) provides services for children or youth with emotional disturbances;
 - (ii) operates for the primary purpose of providing residential psychiatric care to individuals under 21 years of age;
 - (iii) is licensed by the department of public health and human services; and
 - (iv) participates in the Montana medicaid program for psychiatric facilities or programs providing psychiatric services to individuals under 21 years of age; or
 - (v) notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv), has received a certificate of need from the department of public health and human services pursuant to Title 50, chapter 5, part 3, prior to January 1, 1993.
- (b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment.